THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12527 OF 2005

Dated : 11th November, 2005.

Between:

1. Godugu Saidulu and another. … Petitioners

And

1. The Station House Officer, P.S. Thungathurthi, Nalgonda District and 11 others. … Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12527 OF 2005

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ORDER :

This writ petition is filed seeking a declaration that the alleged action of the respondents 1 to 6 and 10 in harassing the petitioners and subjecting them to third degree methods and also making the 2nd petitioner to withdraw the amount lying in her accounts with the respondents 7 to 9 Banks as arbitrary and illegal and for a consequential direction to return the said amounts to the petitioners together with a motor vehicle seized from the 2nd petitioner.

The 1st petitioner is an agriculturist and also carrying on business in paddy. The 2nd petitioner is his wife. It is claimed that the petitioners own 12 acres of land and they have been cultivating the same drawing water with three electric motors. It is not in dispute that on a complaint made by the respondent No.10 and some other villagers alleging that the 1st petitioner purchased 2400 bags of paddy from various farmers of the village, but failed to pay the sale proceeds to them, the 1st respondent - Station House Officer, PS Thungaturthi registered CrNo.70 of 2004 against the 1st petitioner under Section 420 of IPC. It is alleged that the 10th respondent and other complainants had high-handedly beat the 2nd petitioner and her in-laws and took away the three electric motors and other agricultural implements and they had also driven away the petitioners from their house. Though the petitioners lodged a complaint, the police did not take any action against the 10th respondent and other villagers. It is further alleged that the respondents 3 to 6 – police officials at the instance of the 10th respondent took the 1st petitioner into custody on 4-5-2005 in spite of the fact that he obtained anticipatory bail. That apart, the 2nd petitioner was taken in a vehicle to the 7th respondent Bank at Mahaboobabad where the 2nd petitioner has deposited a sum of Rs.2,73,000/- in the form of a fixed deposit. The petitioner was forced to withdraw the said amount and from there the 2nd petitioner was taken to the 8th respondent Bank at Khammam where a sum of Rs.53,000/- was lying in her account. The said amount was also withdrawn by forcibly obtaining the signature of the 2nd petitioner on the withdrawal form. Thereafter, the respondents took the 2nd petitioner to the 9th respondent Bank at Vijayawada where the petitioners 1 and 2 are having a joint account in which a sum of Rs.7,500/- was lying. The said amount was also withdrawn by obtaining the signature of the 2nd petitioner on the withdrawal form forcibly. That apart, a Motorcycle bearing

Regn.No.AP-16-AL-5978 which was purchased by the 2nd petitioner under a hire purchase agreement with ICICI Bank was also seized by the respondents. They have also forcibly taken away two tulas of gold and cash from the third parties to whom certain amounts were advanced by the 2nd petitioner under promissory notes. According to the petitioners, a total sum of Rs.3,70,000/- was collected by the respondents 1 to 6 and the same was deposited in the account of the 10th respondent in Nagarjuna Grameena Bank, Thungathurthi of Nalgonda District. It is alleged that the 2nd petitioner who was carrying 7th month pregnancy was harassed physically and mentally and the entire amount from her Bank accounts as well as from third parties was withdrawn forcibly by the respondents 1 to 6 under the influence of the respondent No.10. It is alleged that the amount so collected from the 2nd petitioner was not deposited in the Court nor the said fact was intimated to the Court. Even the Motorcycle seized from the petitioner was not deposited in the Court. Aggrieved by the said alleged high-handed action of the respondents, this writ petition is filed contending that the action of the respondents 1 to 6 in taking law into their hands and harassing the petitioners physically and mentally is arbitrary and illegal.

On behalf of the respondents 1 to 6, the Sub-Inspector of Police, Thungathurthi P.S. filed a counter-affidavit denying all the allegations made by the petitioners and categorically stating that except addressing a letter to the Branch Managers of the respondents 7, 8 and 9 Banks requesting to freeze the accounts maintained by the petitioners in their Banks, no action as alleged by the petitioners was taken. The alleged seizure of the Motorcycle belonging to the 2nd petitioner was also categorically denied and it has been further explained that one Mr. Yenuguthala Pedda Laxmaiah and 4 others, residents of Velugupally village of Thungathurthy Mandal jointly lodged a complaint with the Station House Officer, Thungathurthy Police Station on 25-5-2004 at 16.00 hours alleging that the 1st petitioner herein Mr. Godugu Saidulu has purchased 2400 bags of paddy worth about Rs.10 lakhs from them (who are the farmers) and also from 46 other farmers of Velugupally village and disappeared from the village since 25-4-2004 without making any payments to the ryots and requested the Sub-Inspector of Police, Thungathurthy Police Station to take necessary action and do justice. Basing on the above complaint, the Sub-

Inspector of Police, Thungathurthy Police Station registered a case in Cr.NO.70 of 2004 under Section 420 of IPC on 25-5-2004 and investigation was taken up. It is further stated that during the course of investigation, the investigation officer examined as many as 61 witnesses and recorded their detailed statements. The investigation reveals that the petitioners purchased the paddy from the ryots and fled away from the village and thereby cheated the ryots. During the course of investigation, the Investigating Officer collected information about the Bank accounts of the petitioners and sent requisitions to the Branch Manager, Indian Overseas Bank, Mahaboobabad and Corporation Bank, Khammam requesting them to freeze the accounts maintained by the petitioners in their Banks. It was also found that the petitioners are having a balance amount of Rs.2,67,000/- at Indian Overseas Bank, Mahaboobabad and also Rs.55,000/- at Corporation Bank, Khammam. It is further stated that there was ample evidence to establish the guilt of the petitioners and the investigation is likely to be completed within a short period.

The respondent No.10 filed a separate counter-affidavit stating that he and 53 others who are all agriculturists had given 2400 bags of paddy to the 1st petitioner, the value of which was more than Rs.10 lakhs. The 1st petitioner who carries on business in sale of paddy, having taken delivery of the entire stock failed to pay the value of the paddy purchased by him. Hence, they were constrained to lodge a compliant in Thungathurthi Police Station. While the matter was under investigation, the 1st petitioner having obtained anticipatory bail on 11-7-2004 came to the village in May, 2005 and on the advice of his relatives agreed to pay initially a sum of Rs.3,70,000/- and thereafter a further sum of Rs.2 lakhs. He also agreed to give away his vehicle bearing No.AP-16-AL-5978 as a part payment and voluntarily handed over the said vehicle for appropriating its value towards payment. As per the terms of compromise, the 1st petitioner paid a sum of Rs.3,70,000/- on 6-5-2005 and the same was deposited in the account of the 10th respondent in Nagarjuna Grameena Bank. Suppressing all the said facts, the petitioners filed the present writ petition making false allegations that the respondents have forcibly withdrawn the amounts from their Bank accounts and seized the Motorcycle. All other allegations made by the petitioners have been categorically denied and it is stated that the sum of Rs.3,70,000/- was deposited in his Savings Account since he is the only person having Bank account and that the said amount requires to be distributed to the

concerned farmers who are in dire need of money for performing their agricultural operations.

The petitioners filed an affidavit in Reply disputing the version of the respondents. The plea of the respondents that the 1st petitioner entered into a compromise with the farmers has been denied. He also denied the plea that he purchased paddy from the farmers of the village and asserted that he did not owe any amount to any of the farmers including the 10th respondent.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner vehemently contends that since the investigation in Cr.No.70 of 2004 is still pending, it cannot be concluded that the allegations made by the 10th respondent and the other farmers against the 1st petitioner are established. Hence, the learned Counsel submits that till the investigation is completed the amount lying in the savings account of the 10th respondent which admittedly belongs to the petitioners cannot be permitted to be disbursed to the farmers of the village.

On the other hand, the learned Counsel for the 10th respondent submits that the writ petition is nothing but an attempt to wriggle out of the undertaking given by the 1st petitioner in the compromise entered into with the 10th respondent and other villagers. The learned Counsel contends that since the claim made by the petitioners in this writ petition is the subject-matter of the investigation which is still pending in Cr.No.70 of 2004, the writ petition is misconceived and cannot be maintained and therefore liable to be dismissed in limini.

As can be seen from the material on record, it is not in dispute that the investigation in Cr.No.70 of 2004 which was registered against the 1st petitioner for the offence punishable under Section 420 of IPC is still pending. Though the third respondent in the counter-affidavit has stated that the investigating officer examined as many as 61

witnesses and the investigation revealed that the writ petitioners fled away from the village without paying the sale proceeds of the paddy purchased from the villagers, until and unless it is decided by a competent Court after full-fledged trial that the charges are proved, it cannot be assumed that the 1st petitioner is guilty of the offence alleged.

It is also an admitted fact that the sum of Rs.3,70,000/- which has been deposited in the Savings account of the 10th respondent belongs to the writ petitioners. Though the respondents 1 to 6 and the 10th respondent claim that the said amount was voluntarily paid by the petitioners towards the value of the paddy delivered by the villagers in compliance with the undertaking given by the 1st petitioner and that he also undertook to pay the balance amount shortly after disposing of some of his immoveable properties, the petitioners categorically denied the same and pleaded that the 1st petitioner did not owe any amount to the 10th respondent or other villagers and that he never undertook to repay the alleged amounts to them. As a matter of fact, the petitioners denied even the alleged purchase of paddy from the farmers of the village including the 10th respondent. Evidently, the claim of the 10th respondent and other farmers for recovery of the value of the paddy allegedly sold to the 1st petitioner involves several disputed questions of fact, purely of civil nature which require to be adjudicated by a competent Court of law on the basis of the evidence that may be adduced by both the parties to substantiate their respective claims. As of today, there is no such adjudication and therefore the question is whether the 10th respondent can be permitted to appropriate the amounts in question towards their claim against the 1st petitioner.

The specific plea of the petitioners is that the amount of Rs.3,70,000/- was collected by the respondents 1 to 6 – police officials at the instance of the 10th respondent from the Bank accounts of the petitioners forcibly and high-handedly under threat and coercion. It is also their case that the accounts with the respondents

7 and 8 Banks stand exclusively in the name of the 2nd petitioner who has nothing to do with the alleged business transaction of the 1st petitioner with the farmers of the village.

It is relevant to note that though the respondents 7 and 8 Banks did not respond to the Rule Nisi ordered by this Court, on behalf of the respondent No.9 Bank, the Branch Manager filed a counter-affidavit stating as under :

> *"It is humbly submitted that G.Saidulu opened a Savings Bank Account along with his wife C. Pushpalata on 14-06-2004. The account opening form was signed by both Sri G. Saidulu and Smt. C. Pushpalatha and the photographs are also affixed on the application form dated 14-06-2004. On 04-05-2005 the Assistant Sub-Inspector of Police, Tungaturthi Police Station came with Sri G. Saidulu and requested to close the account of Sri G. Saidulu and his wife surrendered to police in some offence committed by them. Accordingly, the account was closed and the balance in the account was paid to the said account-holder. The said G.Saidulu was accompanied by Assistant Sub-Inspector Sri V. Amosu and the identity card which was verified is also filed in support of this counter-affidavit. The letter was also addressed by the Sub-Inspector, Tungaturthy police station on 4-5-2005 for closure of the account."*

From the above counter-affidavit filed on behalf of the respondent No.9 Bank, prima facie it appears that the amount lying in the accounts of the petitioners were withdrawn at the instance of the respondents 1 to 6 – police officials. Undoubtedly, such action on the part of the respondents 1 to 6 while the investigation is still pending, would amount to taking law into their hands without following due process of law. Though it is always open to the 10th respondent and other complainants to work out the appropriate remedy as available under law for recovery of the amounts alleged to be due from the 1st petitioner and also to restrain the petitioners 1 and 2 from disposing of their property till their claim is settled, it is not permissible for them to resort to coercive methods under the guise of the investigation pending in Cr.No.70 of 2004. It is true that the issues whether the 1st petitioner has purchased the paddy from the farmers of the village and whether he failed to pay the sale proceeds as alleged by the 10th respondent and fled away from the village by cheating them are all the subject-matter of Cr.No.70 of 2004 which is still under investigation and therefore this Court will not enter into the said controversy.

Similarly, the plea of the respondents that Rs.3,70,000/- was voluntarily paid by the 1st petitioner on the basis of the undertaking given by him is a highly disputed question of fact and it is neither proper nor possible for this Court to adjudicate upon the same and to record a finding. However, the fact remains that the said sum of Rs.3,70,000/- which admittedly belongs to the writ petitioners has already been withdrawn and the same now stands deposited in the S.B. Account of the 10th respondent.

As expressed above, the 10th respondent and other farmers cannot make any claim in respect of the said amount until and unless the liability of the 1st petitioner is adjudicated by a competent Court following due process of law. Till such time, having regard to the peculiar facts and circumstances of the case, this Court feels it necessary to safeguard the interest of both the parties by keeping the said amount of Rs.3,70,000/- in tact.

Accordingly, there shall be a direction to the respondents 1 to 4 to complete the investigation in Cr.No.70 of 2004 expeditiously and to take necessary further action in accordance with law. In the meanwhile, it is open to the writ petitioners as well as the 10th respondent and other complainants to work out the appropriate remedy as available under law to establish their respective claims with regard to Rs.3,70,000/- which is now lying in the savings account of the 10th respondent and to obtain appropriate orders. Till such time, the 10th respondent is restrained from withdrawing the said sum of Rs.3,70,000/- together with the interest accrued thereon which is in deposit in his S.B. Account in Nagarjuna Grameena Bank, Thungathurthy of Nalgonda District.

The Writ Petition is accordingly disposed of. No costs.

11th November, 2005.

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